



ILLINOIS COMMERCE COMMISSION

July 13, 2001

The Burlington Northern and Santa Fe Railway Company,  
Petitioner,

v.

Tamalco Township, Bond County, Illinois; Pleasant Mound Township, Bond  
County, Illinois; Bond County, Illinois; and, State of Illinois, Department of  
Transportation,  
Respondents.

Petition seeking a determination from the Illinois Commerce Commission  
whether the warning devices at the public grade crossing located at the tracks  
of The Burlington Northern and Santa Fe Railway Company ("BNSF") and TR  
247 (Main Street) in Tamalco Township, Bond County, Illinois. Milepost 102.33,  
DOT No. 069316E should be upgraded to automatic flashing light signals with  
gates and constant warning time circuitry; whether the public grade crossing  
located at the intersection of the tracks of BNSF and Township Road TR 238 in  
Tamalco Township, Bond County, Illinois, Milepost 102.21, DOT No. 069318T  
should be closed; and, a connecting road constructed on the east side of the  
tracks and right-of-way of BNSF between Township Road TR 247 (Main Street)  
and TR 238, with any such cost be borne by the parties in accordance with law  
and that a substantial portion of the cost to be borne by the Grade Crossing  
Protection Fund.

TO1 -0028

And

Petition seeking a determination from the Illinois Commerce Commission  
whether the warning devices at the public grade crossing located at the tracks  
of BNSF and Township Road TR 199 in Tamalco Township, Bond County,  
Milepost 98.65, DOT No. 069156T should be upgraded to automatic flashing  
light signals and gates with constant warning time circuitry; the public grade  
crossing located at the intersection of Township Road TR 232 in Tamalco  
Township, Bond County, Illinois, Milepost 98.59, DOT No. 069160H should be  
closed; a connecting road constructed on the east side of the tracks and right-  
of-way of BNSF connecting Township Road TR 199. Township Road TR 326  
(Second Street) and TR 232a; whether the warning devices at the grade  
crossing located at the intersection of TR 326 (Second Street) and the tracks of  
BNSF, Milepost 98.31 should be upgraded to automatic flashing light signals  
and gates; the public at grade crossing at the intersection of Township Road  
TR 232a and the tracks of BNSF, Milepost 98.23, DOT No. 069158G should be  
closed; and, a connecting road west of BNSF's track and right-of-way  
extending High Street to the north to Township Road TR 232a, with any such  
costs to be borne by the parties in accordance with law and that a substantial  
portion of any such costs be borne by the Grade Crossing Protection Fund.

TO ALL PARTIES OF RECORD.

DOCK 6

July 13, 2001

**HEARING EXAMINER'S PROPOSED ORDER**

Attached is a copy of the Hearing Examiner's Proposed Order in the above referenced matter.

The Hearing Examiner's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

Entered:



Rick Korte, Chief Hearing Examiner  
Review & Examination Program

RK:rsc

Railroad Staff: Mr. Humphries

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company,  
Petitioner,

vs.

Tamalco Township, Bond County, Illinois; Pleasant Mound :  
Township, Bond County, Illinois; Bond County, Illinois; and, State :  
of Illinois, Department of Transportation,  
Respondents.

Petition seeking a determination from the Illinois Commerce  
Commission whether the warning devices at the public grade  
crossing located at the tracks of The Burlington Northern and :  
Santa Fe Railway Company ("BNSF") and TR 247 (Main Street) :  
in Tamalco Township, Bond County, Illinois, Milepost 102.33, :  
DOT No. 069316E should be upgraded to automatic flashing light  
signals with gates and constant warning time circuitry; whether  
the public grade crossing located at the intersection of the tracks :  
of BNSF and Township Road TR 238 in Tamalco Township,  
Bond County, Illinois, Milepost 102.21, DOT No. 069318T should  
be closed; and, a connecting road constructed on the east side of  
the tracks and right-of-way of BNSF between Township Road TR :  
247 (Main Street) and TR 238, with any such cost be borne by :  
the parties in accordance with law and that a substantial portion  
of the cost to be borne by the Grade Crossing Protection Fund.

TO1 -0028

And

Petition seeking a determination from the Illinois Commerce  
Commission whether the warning devices at the public grade  
crossing located at the tracks of BNSF and Township Road TR  
199 in Tamalco Township, Bond County, Milepost 98.65, DOT  
No. 069156T should be upgraded to automatic flashing light  
signals and gates with constant warning time circuitry; the public  
grade crossing located at the intersection of Township Road TR  
232 in Tamalco Township, Bond County, Illinois, Milepost 98.59,  
DOT No. 069160H should be closed; a connecting road  
constructed on the east side of the tracks and right-of-way of  
BNSF connecting Township Road TR 199, Township Road TR  
326 (Second Street) and TR 232a; whether the warning devices  
at the grade crossing located at the intersection of TR 326  
(Second Street) and the tracks of BNSF, Milepost 98.31 should  
be upgraded to automatic flashing light signals and gates; the

public at grade crossing at the intersection of Township Road TR :  
232a and the tracks of BNSF, Milepost 98.23, DOT No. 069158G :  
should be closed; and, a connecting road west of BNSF's track :  
and right-of-way extending High Street to the north to Township :  
Road TR 232a, with any such costs to be borne by the parties in  
accordance with law and that a substantial portion of any such  
costs be borne by the Grade Crossing Protection Fund.

### PROPOSED ORDER

By the Commission:

On April, 10, 2001, The Burlington Northern and Santa Fe Railway Company ("Railroad") filed with the Illinois Commerce Commission ("Commission") a verified petition in the above captioned matter naming as respondents Tamalco Township, Bond County, ("Tamalco"); Pleasant Mound Township, Bond County ("Pleasant Mound"); Bond County, ("County"); and, State of Illinois, Department of Transportation, ("Department").

On May 31, 2001, a hearing was held before a duly authorized Hearing Examiner at the Commission's Springfield Office. Appearances were entered by the Railroad, the Department and a member of the Commission's Railroad Section ("Staff"). The Railroad offered evidence and testimony in support of the petition filed herein. Staff testified that meetings were held to discuss the closures and at-grade crossing improvements with County and Tamalco and Pleasant Township Officials. No objections to the closures were registered at these meetings. Staff recommended that the Commission approve the closures and grade crossing improvements. Before the conclusion of the hearing, three Greenville residents were given the opportunity to make statements for the record about their objections to the proposed closure of the crossing at DOT 069158G milepost 98.23, commonly know as Sixth Street in Hookdale. Greenville is approximately 15 miles from Hookdale. At the conclusion of the hearing, the record was marked "Heard and Taken".

As required by Law, public notice of the hearing on the subject case was published in the Greenville Advocate, a newspaper of general circulation, on May 10, 2001.

TR-247, TR-238, TR-199, TR-232, TR-326, and TR-232A are public roadways located within and under the jurisdiction of the Tamalco and Pleasant Mound Townships. The Railroad operates a single main line track through Bond County, Tamalco and Pleasant Mound Townships. The track generally runs northwest to southeast at a maximum timetable speed of 49 miles per hour and has approximately 9 train movements daily.

Going south to north the roadways subject of this docket are as follows:

Tamalco

TR-247. (Main Street/Tamalco Avenue)  
(DOT 069316E, milepost 102.33)

- The roadway is a 24' oil and chip road generally running east to west and has an ADT of less than 75. The crossing surface is a 24' full depth timber crossing in good condition. The crossing is presently provided with automatic flashing light signals and railroad advance warning signs. Visibility is restricted due to trees on the east approach in the southwest quadrant.

TR-238. (Town Hall Road)  
(DOT 069318T, milepost 102.21)

The roadway is a 20' oil and chip, all weather, road generally running in a north to south and has an ADT of less than 35. The track and roadway intersect at a sharp skewed angle of less than 30°. The crossing surface is a 56' full depth timber crossing in good condition. The crossing is presently provided with reflectorized cross bucks and railroad advance warning signs.

Staff and Railroad Recommendation: Close, abolish and install barricades conforming to 92 IAC 1535 on TR-238; build a 20' wide all weather connecting road from TR-247 to TR-238 on the east side of the Railroad; and install new automatic flashing light signals and gates controlled by constant warning time circuitry on TR-247. Estimated cost of the connecting road is \$99,519. Estimated cost of the right-of-way required to construct the roadway is \$16,500. Estimated cost to install the automatic flashing light signals and gates is \$148,556. Estimated cost to add a sidelight to the warning devices noted herein is \$750. The Railroad would bear all associated cost of installing the required barricades per 92 Ill. Adm. Code 1535.

Hook Dale

TR-199. (Hook Dale Avenue)  
(DOT 069156T, milepost 98.71)

- The roadway is a 20' oil and chip road with 2' shoulders, generally running in an east to west and has an ADT of less than 100. The crossing surface is a 24' full depth timber crossing in good condition. The crossing is presently provided with automatic flashing light signals and railroad advance warning signs.

TR-232. (Becker Road)  
(DOT 069160H, milepost 98.59)

- The roadway is a 20' oil and chip road, generally running in a north to south and has an ADT of less than 179. The crossing surface is a 56' full depth timber crossing in poor condition. The track and roadway intersect at a sharp skewed angle of less than 30°. The crossing is presently provided with automatic flashing light signals and railroad advance warning signs.

TR-326. (Second Street)  
(DOT 069057V, milepost 98.31)

The roadway is a 20' oil and chip road generally running in an east to west and has an ADT of less than 100. The crossing surface is a 24' full depth timber crossing in fair condition. The crossing is presently provided with reflectorized cross bucks and railroad advance warning signs. There is an elevator spur track as well as the Railroad's main track at this location. The track and crossing are paved over and appear to be not in use.

TR-232A (Sixth Street)  
(DOT 069158G, milepost 98.23)

- The roadway is a 20' oil and chip road generally running in an east to west and has an ADT of less than 100. The crossing surface is a 32' full depth timber crossing in poor condition. The crossing is presently provided with reflectorized cross bucks and railroad advance warning signs. The both approaches to the Railroad's track are steep. Trees and brush in the northeast quadrant obstructs visibility.

Staff and Railroad Recommendations: Close, abolish and install barricades conforming to 92 IAC 1535 on TR-199; build a connecting road from TR-199 to TR-232 on the east side of the Railroad; install a new 32' concrete crossing surface and install new automatic flashing light signals and gates controlled by constant warning time circuitry on TR-232. Estimated cost of the connecting road is \$99,056. Estimated cost of the right-of-way required to construct the roadway is \$12,000. Estimated cost to install the automatic flashing light signals and gates is \$136,743. Estimated cost to install a new 32' concrete crossing surface is 35,849. The Railroad would bear all associated cost of installing the required barricades per 92 Ill. Adm. Code 1535.

Close, abolish and install barricades conforming to 92 IAC 1535 on TR-232A; build a connecting road from TR-232A to TR-326; install a new 32' concrete crossing surface and install new automatic flashing light signals and gates controlled by constant warning time circuitry on the Railroad's main track at TR-326 and reflectorized cross bucks on the elevator spur track on Second Street. Estimated cost of the connecting road is \$106,792. There was no estimate provided for the cost of the right-of-way required to construct the roadway. The Railroad stated it felt the right-of way- cost should be comparable to the cost associated with the cost in the other two locations. Estimated cost to install the

automatic flashing light signals and gates is \$138,181. Estimated cost to install a new 32' concrete crossing surface is 28,000. The Railroad would bear all associated cost of installing the required barricades per 92 Ill. Adm. Code 1535

The Railroad states it will bear 50% of the cost associated with the construction of the connecting roads and installation of the warning devices as well as the cost of the crossing surfaces and barricades. The Railroad requests the Grade Crossing Protection Fund administered by the Commission bear the remaining 50% of the cost of the connecting roads and warning devices.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) the recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are adopted as findings of fact;
- 3) public safety requires that the work proposed in the petition and set forth in the prefatory portion of this order be completed as set forth in Petitioners Exhibits 1-24 admitted into evidence;
- 4) public convenience and necessity do not require the continued existence of TR-238, TR-199 and TR-232A crossings and said crossings should be closed, abolished and barricaded to vehicular traffic, said barricades conforming to the requirements of 92 Ill. Adm. Code 1535.701 and the existing cross buck signs should be removed;
- 5) in the interest of public safety and convenience, roads should be built connecting TR-247 to TR-238, TR-199 to TR-232 and TR-232A to TR-326, all on the east side of the Railroad's mainline track and right of way;
- 6) in the interest of public safety and convenience, the Railroad should be required to install flashing light signals and gates controlled by constant warning time circuitry at TR-247, TR-232 and TR-326 crossings;
- 7) it is fair and reasonable that the costs for the improvements set forth herein should be divided between the Railroad and the Grade Crossing Protection Fund of the Motor Fuel Tax Law as follows:

Improvements	Est. Cost	GCPF <sup>1</sup>	Railroad	Tamalco	Pleasant Mound	County
<b>Tamalco</b>						
<b>Main Street</b>						
Install AFLS/G/CWT	\$148,556	\$74,278 (50%)	\$74,278 (50%)	----	----	----
Install new concrete crossing surface - 40'	No Estimate		100%			
<b>Town Hall Road</b>						
Close and Abolish Crossing, and Install Barricades	No Estimate		100%	----	----	----
Construct Connecting Road <sup>3</sup>	\$99,519	\$49,760 (50%)	\$49,759 (50%)	----	----	----
Right of Way Acquisition for New Roadway	No Estimate (\$16,500) <sup>2</sup>	\$8,250 (50%) <sup>2</sup>	\$8,250 (50%) <sup>2</sup>	----	----	----
<b>Hookdale</b>						
<b>TR-199</b>						
Install AFLS/G/CWT	\$136,743	\$68,371 (50%)	\$68,372 (50%)	----	----	----
Install concrete crossing surface - 40'	\$35,849		\$35,849 (100%)	----	----	----
<b>TR-232</b>						
Close and Abolish Crossing, and Install Barricades	No Estimate		100%	----	----	----
Construct Connecting Road <sup>3</sup>	\$89,142	\$44,571 (50%)	\$44,571 (50%)	----	----	----
Right of Way Acquisition for New Roadway	No Estimate (\$12,000) <sup>2</sup>	\$6,000 (50%) <sup>2</sup>	\$6,000 (50%)	----	----	----
<b>Second Street</b>						
Install AFLS/G/CWT	5138,181	\$69,091 (50%)	\$69,090 (50%)	----	----	----
Install new concrete crossing surface on main track - 32	\$28,680		\$28,680 (100%)	----	----	----
<b>Sixth Street</b>						
Close and Abolish Crossing, and Install Barricades	No Estimate		100%	----	----	----
Construct Connecting Road <sup>3</sup>	\$106,792	\$53,396 (50%)	\$53,396 (50%)	----	----	----
Right of Way Acquisition for New Roadway	No Estimate (\$16,500) <sup>2</sup>	\$8,250 (50%) <sup>2</sup>	\$8,250 (50%)	----	----	----
<b>TOTALS<sup>4</sup></b>	\$828,462	\$381,967	\$446,495	----	----	----

<sup>1</sup> Grade Crossing Protection Fund (GCPF) participation not to exceed these amounts.



- <sup>2</sup> Presumed Right of Way Acquisition Costs.
- <sup>3</sup> No cost estimates provided for engineering, railroad liability insurance, or flagging; the Railroad should bear all costs associated with these items.
- <sup>4</sup> Totals do not reflect cost where no estimates were provided.
- 8) the County has agreed to be the lead agency for the connecting roadway construction. The County will be responsible for the roadway work; provide construction supervision, and prepare all billing on the project;
- 9) the County and Railroad shall each file a written report with the Director of Processing within fifteen (15) days of the conclusion of each calendar quarter, stating the status of expenditures of their portions of the project and their percentage of completion of the project; if the project is behind schedule the report must include a brief explanation of the reason(s) for the delay;
- 10) all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Mr. Henry Cronister, Bureau of Local Roads and Streets, Main Office, Illinois Department of Transportation at 2300 South Dirksen Parkway, Room 205, Springfield, Illinois, 62764. A copy of each bill for Fund reimbursement should also be submitted to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from each party shall be clearly marked "Final Bill". All bills shall be submitted to the Department and Commission no later than twenty-four (24) months from the date of this Commission Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in the Order. The Department shall, at the end of the 24<sup>th</sup> month from the Commission's Order date, de-obligate all residual funds accountable for installation costs for this project;
- 11) the County and Railroad shall each within ninety (90) days of the date of this Commission Order; submit to the Director of Processing, Transportation Division of the Commission, the name, title, mailing address, phone number and facsimile number of a project manager;
- 12) since the connecting roadway construction will be performed by the County and/or its contractor, roadway contractor and railroad liability insurance will be required as specified in Departments "Standards and Specifications for Road and Bridge Construction";
- 13) the Railroad and the County shall have bi-monthly coordination meetings, unless agreed to by each of them that any meeting is not necessary, until the completion of the projects.

IT IS THEREFORE ORDERED that the Railroad be and it is hereby required and directed to close abolish and barricade the at-grade crossings at TR-238, TR-199 and TR-232A, with barricades conforming to the requirements of 92 Ill. Adm. Code 1535.701.

IT IS FURTHER ORDERED that the County be and it is hereby required and directed to construct connecting roads between TR-247 to TR-238, TR-199 to TR-232 and TR-232A to TR-326, all on the east side of the Railroad's mainline track and right of way and thereafter maintain said roadways.

IT IS FURTHER ORDERED that the Railroad be and it is hereby required and directed to install automatic flashing light signals and gates controlled by constant warning time circuitry at the at-grade crossings of TR-247, TR-232 and TR-326 and thereafter maintain and operate same.

IT IS FURTHER ORDERED that the Railroad and County be, and they are hereby, required and directed to proceed immediately in performing its work as set forth in the prefatory portion of this Order, and shall complete its work within eighteen months (18) from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Finding 7, hereinabove.

IT IS FURTHER ORDERED that the Department shall, within thirty (30) days of its receipt of a detailed cost estimate and general layout plan, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed in accordance with Form 3 of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that the Railroad shall file Form 3 of 92 Ill. Adm. Code 1535 of this Commission, one for each location, showing details of the automatic warning device improvements herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Mr. Henry Cronister, Bureau of Local Roads and Streets, Main Office, Illinois Department of Transportation at 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Department shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 24" month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that the Railroad and County shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress each has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the County/Railroad] employee responsible for management of the project.)

IT IS FURTHER ORDERED that the Railroad shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a National Inventory Update Report Form as a notice of said completion.

IT IS FURTHER ORDERED that the Railroad and the County shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project and percentage of completion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 8<sup>th</sup> day of August, 2001.

Chairman